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CLEARINGHOUSE RULE 95-048

Comments

[NOTE: All citations to “Manual” in the comments below are to the Administrative Rules Procedures Manual, prepared by the Revisor of Statutes Bureau and the Legislative Council Staff, dated October 1994.]

1. Statutory Authority

Since the formulae for establishing the fees for certification and registration are established in rules, the only way to change the formulae is to amend the rules. Consequently, s. NR 149.05 (4) needs to be amended to clarify that review by the Laboratory Certification Standards Review Council does not supersede the need to promulgate a rule to change a formula. Furthermore, the proposed formulae are based on authorized spending levels, which are set by the Legislature, not by the department or the Review Council. Perhaps what is needed here is a clearer statement, written in the active voice, explaining how, and to what extent, the fee formulae will be revised in the future. Note also that the phrase “laboratory certification standards review council” should be underscored.

2. Form, Style and Placement in Administrative Code

a. The material listed following s. NR 149.02 (1) (intro.) should either be placed in a table, with a title and column headings, or be numbered with separate paragraphs for each item listed. However, since it appears that this material does not create new requirements, simply reiterating requirements created elsewhere in the Wisconsin Administrative Code, the material could just as well be left in the Note, where it is currently. The cross-references used in this amendment which are more precise than those contained in the current Note, would be helpful, however.

b. Section NR 149.02 (4) should be revised to read as follows:

NR 149.02 (4) Section NR 149.06 applies to the custodians of the records of any of the following:

- (a) A laboratory that currently holds valid certification or registration.
- (b) A laboratory whose certification has been revoked, suspended or voluntarily withdrawn.
- (c) A laboratory that has not renewed its certification or has transferred ownership.

c. Section NR 149.03 (29) offers two separate terms for a single meaning. If both terms are used in the rule, then the department should select one for consistent use and omit the other. If only one term is used, then the reference to the second term in the definition is merely explanatory and should be placed in a note.

d. It appears that the term “received on ice,” defined in s. NR 149.03 (24m), is used only once in the rule, in s. NR 149.11 (3). Since the definition is quite concise, the entire definition can be substituted for the single appearance of the term. Note that, if the department chooses to retain the definition, the words “that sample containers are” should be deleted from the definition.

e. Section NR 149.05 (1) (intro.) is incorrectly drafted as introductory material since it does not end in a colon and lead into the subsequent paragraphs. Therefore, it should be numbered sub. (1) (a) and the subsequent paragraphs should be renumbered.

f. In s. NR 149.05 (1) (a) (intro.), the notation “subd. 1-4” should be replaced by the notation “subds. 1. to 4.” Also, all of the Notes contained in par. (a) should be incorporated into the text of the rule, since they provide definitions of the terms used, not mere explanations. Finally, par. (c) can be omitted, because it is redundant with the information contained in item 25 of Table 2.

g. SECTION 16 should be broken into two SECTIONS. The first would renumber s. NR 149.12 to be s. NR 149.12 (1) and amend the renumbered subsection. The second SECTION would create s. NR 149.12 (2).

h. Section NR 219.02 (2) is not an applicability statement and does not create a substantive requirement. This provision should either be rewritten as an applicability statement or be placed in a note.

i. In s. NR 219.04 (2), the material now numbered as an introduction should be par. (a) and titled “General.” In s. NR 219.04 (2) (d), “shall” should replace “will” in the last sentence.

j. The treatment clause of SECTION 26 should read “NR 219.04 table A title, header and items 1 and 2 are amended to read:”.

k. In the recreated Table C, the individual chemicals should be numbered in order under each subheading. The retention of the serial numbers from the previous version of this table,

now in jumbled order, adds nothing to the table. In addition, it may be useful to use an outline form, numbering major categories (e.g., VOLATILES and PHENOLS) with Roman numerals and subheadings (e.g., “Halogenated Volatiles” and “Aromatic Volatiles”) with capital letters. This would allow the identification of any item in the entire table by an outline number. Finally, the two volatile compounds at the beginning of the table (acrolein and acrylonitrile) should be placed under a subheading of “Other Volatiles.”

l. SECTION 33 creates a Note 11 to Table EM of s. NR 219.04. There are currently no notes numbered 9 or 10; should this new note be numbered 9? Also, should the Note refer to “Table EM” rather than “Table G”?

m. In the current rule, Tables A to F follow s. NR 219.05. However, the rule-making order refers these tables as numbered with s. NR 219.04. In addition, the treatment of s. NR 219.05 by the rule-making order is placed after the treatment of the tables. If the department intends to reverse the order of s. NR 219.05 and Tables A to F, this should be indicated in the form of a note to the Revisor of Statutes.

n. The first sentence of s. NR 219.05 should be placed in a note, since it does not make any substantive requirement. The last sentence of that section is also problematic, due to the confusing uses of the word “approved.” In the first use of the term, whose approval is referred to, the Department of Natural Resources’, the Environmental Protection Agency’s or both? In the second use of the term, what approved method is an equivalent, the method specified in the rule? This needs clarification.

o. Section NR 700.13 (2) (intro.) should be renumbered as s. NR 700.13 (2) (a) and the subsequent paragraphs should be pars. (b) and (c). Also, the sentence “(s)uitable devices known to the department are identified in sub. (3)” does not adequately identify storage devices. It would be clearer if the three types of storage devices mentioned in the table following sub. (3) were simply listed in the text of this rule. Finally, information regarding how to obtain the reference documents cited in this paragraph and the following paragraph, or cross-references to that information, should be included.

5. Clarity, Grammar, Punctuation and Use of Plain Language

a. The discussion of fees in s. NR 149.05 (1) is confusing. The formulae presented provide a mechanism for matching the fee revenues to the authorized expenditures. However, it works only if you know before assessing the fees the total number of fees that will be assessed. Are all fees for one year assessed at the same time, such that this is possible? Alternatively, are the fees for one year based on the experience of the preceding year? This needs greater explanation.

b. In s. NR 149.06 (1) (intro.), the words “by the certified or registered laboratory” should be retained in the rule for greater clarity. Also, the sentence should be rewritten in the active voice, e.g., “The certified or registered laboratory shall retain....”

c. Section NR 149.07 (3) (d) and (5) (e), as created by the rule, do not follow grammatically from their introductory material.

d. In the first sentence of s. NR 149.44, it should be clarified that the phrase “on a case-by-case basis” modifies the first clause of the sentence, rather than the second. This could be done by placing that phrase after the word “accept.” Also, in the second-to-last sentence, note that the word “data” is plural and that the word “does” should be replaced by the word “do.”

e. In s. NR 219.04 (1), note that neither ss. NR 219.05 nor 149.12 establishes alternate test procedures. Therefore, the word “established” in the last sentence of that subsection should be stricken through and followed by the word “allowed.”

f. In Notes 4 to 9 of s. NR 219.04 Table BM, the word “are” should be replaced by the word “is.” Alternatively, the phrase “are defined as” could be replaced by the word “means.”

g. In s. NR 219.05, “case-by-case” should replace “case-by case.”

h. Section NR 700.13 does not appear to fall within the purpose of that chapter, as stated in s. NR 700.01 (1). Should this latter subsection be amended to broaden the stated purpose of the chapter?

i. Does the table following s. NR 700.13 (3) specify minimum or maximum holding times? This needs clarification.